

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re:	)	Case No. 05-12686
	)	
CHARLES J. SADAR and	)	Chapter 7
GLORIA J. SADAR,	)	
	)	
Debtors.	)	Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
STEVEN S. DAVIS, TRUSTEE.	)	Adversary Proceeding No. 05-1460
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CHARLES SADAR, et al.,	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	
Defendants.	)	

Steven Davis, the chapter 7 trustee, filed a complaint to revoke and deny a discharge to the debtors Charles and Gloria Sadar under bankruptcy code §§ 727(d)(3) and (a)(6)A) alleging that the debtors failed to comply with a court order to turn over property of the estate to the trustee. The trustee now moves for summary judgment on the ground that there is no genuine issue of material fact and he is entitled to judgment as a matter of law. The debtors did not respond to the motion and the time for doing so has expired. For the reasons stated below, the motion is granted.

## JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (J).

## FACTS

These are the undisputed facts based on the docket and the evidence submitted to support the summary judgment motion:<sup>1</sup>

The debtors filed their chapter 7 case on March 5, 2005 and received a discharge of debt on June 6, 2005. On May 20, 2005, this court entered an order requiring the debtors to turn over to the trustee either a 1997 Pontiac Grand Am or its value (\$5,200.00) because the Pontiac is property of the chapter 7 estate. The debtors have failed to comply with the order.

## SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c) (made applicable by FED. R. BANKR. P. 7056); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. at 323. Summary judgment “shall be rendered . . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact[.]” FED. R. CIV. P. 56(c).

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<sup>1</sup> Affidavit of Steven Davis, exhibit to motion.

Once a movant has met its burden, the burden shifts to the nonmoving party to show the existence of a material fact which must be tried. *Id.* The nonmoving party must oppose a proper summary judgment motion “by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves . . . .” *Celotex Corp. v. Catrett*, 477 U.S. at 324. All reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. Am. Eng’g Co.*, 33 F.3d 727, 730 (6<sup>th</sup> Cir. 1994). The issue at this stage is whether there is evidence on which a trier of fact could reasonably find for the nonmoving party. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6<sup>th</sup> Cir. 1989).

### DISCUSSION

Bankruptcy code § 727(d)(3) provides that:

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if –

\* \* \*

(3) the debtor committed an act specified in subsection (a)(6) of this section; . . . .

Subsection (a)(6) provides that a debtor is not entitled to a discharge if:

\* \* \*

(6) the debtor has refused, in the case –

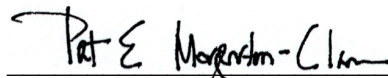
(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify; . . . .

11 U.S.C. § 727(a)(6)(A).

The trustee established that the debtors have refused to turn over estate property to the trustee as ordered by this court. The debtors had notice and an opportunity to be heard, but did not provide evidence to contradict the trustee's case. As a result, the debtors' discharges are revoked under 11 U.S.C. § 727(a)(d)(3) and are then denied under § 727(a)(6)(A).

**CONCLUSION**

A separate order will be entered granting the trustee's motion for summary judgment, revoking the debtors' discharges, and denying the debtors a discharge.



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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

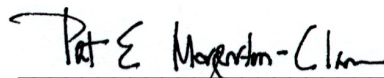
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STEVEN S. DAVIS, TRUSTEE.	)	Adversary Proceeding No. 05-1460
	)	
Plaintiff,	)	
	)	
v.	)	<b><u>ORDER</u></b>
	)	
CHARLES SADAR, et al.,	)	
	)	
Defendants.	)	

For the reasons stated in the memorandum of opinion filed this same date, the trustee's motion for summary judgment is granted, the debtors' discharges are revoked, and the debtors' request for a discharge is denied. (Docket 12).

IT IS SO ORDERED.

  
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 Pat E. Morgenstern-Clarren  
 United States Bankruptcy Judge